

BEFORE THE
TENNESSEE STATE BOARD OF EQUALIZATION

<i>In Re:</i>	New Covenant Baptist Church, Inc.)	
	District W6, Map 131, Parcel 76)	
	<i>Claim of Exemption</i>)	Knox County

INITIAL DECISION AND ORDER

Statement of the Case

This is an appeal pursuant to Tenn. Code Ann. section 67-5-212(b)(2) concerning the effective date of exemption of the subject property from ad valorem taxation. The appellant, New Covenant Baptist Church, Inc. ("NCBC"), filed an application for exemption of this property on November 14, 2006. By letter dated June 28, 2007, State Board staff attorney Emily Bennett notified New Covenant of the approval of its application, effective as of the filing date. Marvin Anderson, Chairman of NCBC's Trustee Ministry, appealed this initial determination to the State Board on September 26, 2007. The undersigned administrative judge conducted a hearing of this matter on November 14, 2007 in Knoxville. NCBC was represented by George W. Morton, Esq., of Morton & Morton, PLLC (Knoxville). Susan E. Crabtree, an attorney in the Knox County Law Director's office, appeared on behalf of the Knox County Assessor of Property ("Assessor") with Director of Exemptions/Greenbelt Paula Rudder.

Findings of Fact and Conclusions of Law

This case illustrates the important distinction between an omission of property from the assessment roll and an approval of exemption of such property from taxation by the State Board. Among the duties of a county board of equalization prescribed by Tenn. Code Ann. section 67-5-1402 is to:

- (3) Eliminate from the assessment lists such property as is lawfully exempt from taxation; **provided, that if an application for exemption of such property is required under part 2 of this chapter, the property shall not be eliminated from the assessment lists unless such exemption is approved by an authorized designee of the state board of equalization.** [Emphasis added.]

NCBC was incorporated in this state as a nonprofit religious organization on October 7, 1987. Exhibit 1. Until 1993, the congregation met in various rental locations in the Knoxville area. On October 29 of that year, NCBC purchased a church building and related facilities on Canton Hollow Road from the Church of God of Prophecy ("COGOP"). Exhibits 8 and 10. The State Board had approved COGOP's applications for exemption of the Canton Hollow Road property in the late 1970s.

Although NCBC remained in the Canton Hollow Road property for over a decade, the Church never itself applied for exemption thereof under Tenn. Code Ann. section 67-5-212. Nor, inexplicably, was the Canton Hollow Road property ever assessed to NCBC during that period.¹ According to the written statement of Mr. Anderson (attached to the appeal form), NCBC "was never advised" by its attorney in the Canton Hollow Road transaction of the necessity of filing an application for exemption of that property in its own name. The Chairman of NCBC's Deacon Ministry testified to the same effect at the hearing.

The approximately 13-acre parcel in question is located at 10317 Starkey Lane. When NCBC purchased most of this land from the Ritter family in 1998, it was undeveloped.² On April 27, 2005, the Knox County Department of Code Administration issued a certificate of occupancy for the new "worship complex" which had been erected on this site. Exhibit 4. NCBC has continuously used this complex for its religious purposes ever since. NCBC sold the Canton Hollow Road property to Chester D. and Barbara A Caudill on February 28, 2005.³ Exhibit 3.

In this appeal, NCBC does not claim to have filed any application for exemption of the subject property prior to November 14, 2006. However, based on the provisions of Tenn. Code Ann. section 67-5-212(b)(3)(B), the appellant contends that the exemption approved by the State Board designee should be effective as of the date of occupancy.⁴ That statute reads as follows:

If a religious institution acquires property previously approved for a religious use exemption, **or property to replace its own property previously approved for a religious use exemption**, then the effective date of exemption shall be five (5) years prior to the date of application, or the date the acquiring institution began to use the property for religious purposes, whichever is later. [Emphasis added.]

This law, most recently amended in 2005, carves out an exception to the general rule regarding the effective date of property tax exemptions set forth in Tenn. Code Ann. section 67-5-212(b)(3)(A). Generally, if an approved application is filed after May 20 *and* more than 30 days after exempt use of the property in question began, the exemption will be effective as of the date of application. The State Board's staff attorney obviously deemed that to be the situation here.

¹The Canton Hollow Road property (Map 143, Parcel 04812) was still shown in the Assessor's records as "exempt" in 2004. Exhibit 2.

²NCBC acquired a two-acre portion of the subject property from Betty Stooksbury on November 21, 2005.

³According to NCBC Ministry Assistant Julia McGlown, Mr. Caudill is the pastor of the "Christian Worldwide Center." The warranty deed does not refer to him in that capacity.

⁴The two acres acquired from Ms. Stooksbury, of course, would not be exemptible prior to the date of transfer (November 21, 2005).

As the party seeking to change the initial determination on its application for exemption, NCBC has the burden of proof in this administrative proceeding. State Board Rule 0600-1-.11(2).

It is difficult to characterize the parcel in question – which NCBC did not even put to religious use until more than six years after acquiring it – as a “replacement” property within the purview of Tenn. Code Ann. section 67-5-212(b)(3)(B). Presumably, the “replacement property” clause in this statute was intended for the benefit of a church or other religious institution which mistakenly believed an exemption previously obtained under that section to be “portable.”⁵ Having paid the taxes on the subject land for a number of years prior to completion of the new church building there, NCBC could hardly have been under any such misapprehension.

Further, even assuming that the subject property may legitimately be considered a replacement for the Canton Hollow Road property, the administrative judge is not persuaded that an earlier effective date of exemption should be granted. According to Tenn. Code Ann. section 67-5-212(b)(1):

Any owner of real or personal property claiming exemption under this section or section 67-5-207, 67-5-213 or 67-5-219 shall file an application for the exemption with the state board of equalization on a form prescribed by the board, and supply such further information as the board may require to determine whether the property qualifies for exemption. **No property shall be exempted from property taxes under these sections, unless the application has been approved in writing by the board...**[Emphasis added.]

Tenn. Code Ann. section 67-5-212(b)(2) explicitly states that “the exemption shall not be transferable or assignable.”

Clearly, then, the Assessor was not authorized to “approve” exemption of the Canton Hollow Road property. The fact that such property was still (erroneously) designated as “exempt” long after the transfer thereof to NCBC does not constitute the approval required by state law.

Nevertheless, counsel for NCBC maintained, it suffices that the “replaced” (Canton Hollow Road) property was “previously approved for a religious use exemption” – albeit under the prior ownership of COGOP. The administrative judge respectfully disagrees. Carried to its literal extreme, the appellant’s interpretation would mean that *any* previous approval of a religious exemption for a “replaced” property – no matter how remote in time or chain of title – could trigger a backdated exemption for the present owner of the “replacement” property under Tenn. Code Ann. section 67-5-212(b)(3)(B). Surely the legislature did not contemplate such a potentially far-reaching exception to the general rule. Rather, the benefit of the “replacement property” clause in the statute must reasonably be confined to the religious institution in whose name the exemption of the replaced property was “previously approved” by the State Board.

⁵Tenn. Code Ann. section 67-5-212(b)(1) provides (in relevant part) that “[a] separate application shall be filed for each parcel of property for which exemption is claimed.”

Order

It is, therefore, ORDERED that the initial determination of the State Board's staff attorney be affirmed.

Pursuant to the Uniform Administrative Procedures Act, Tenn. Code Ann. §§ 4-5-301—325, Tenn. Code Ann. § 67-5-1501, and the Rules of Contested Case Procedure of the State Board of Equalization, the parties are advised of the following remedies:

1. A party may appeal this decision and order to the Assessment Appeals Commission pursuant to Tenn. Code Ann. § 67-5-1501 and Rule 0600-1-.12 of the Contested Case Procedures of the State Board of Equalization. Tennessee Code Annotated § 67-5-1501(c) provides that an appeal **“must be filed within thirty (30) days from the date the initial decision is sent.”** Rule 0600-1-.12 of the Contested Case Procedures of the State Board of Equalization provides that the appeal be filed with the Executive Secretary of the State Board and that the appeal **“identify the allegedly erroneous finding(s) of fact and/or conclusion(s) of law in the initial order”**; or
2. A party may petition for reconsideration of this decision and order pursuant to Tenn. Code Ann. § 4-5-317 within fifteen (15) days of the entry of the order. The petition for reconsideration must state the specific grounds upon which relief is requested. The filing of a petition for reconsideration is not a prerequisite for seeking administrative or judicial review.

This order does not become final until an official certificate is issued by the Assessment Appeals Commission. Official certificates are normally issued seventy-five (75) days after the entry of the initial decision and order if no party has appealed.

ENTERED this 28th day of December, 2007.



PETE LOESCH
ADMINISTRATIVE JUDGE
TENNESSEE DEPARTMENT OF STATE
ADMINISTRATIVE PROCEDURES DIVISION

cc: George W. Morton, Attorney, Morton & Morton, PLLC
Susan E. Crabtree, Knox County Deputy Law Director
Paula Rudder, Director, Exemption Department, Knox County Assessor's Office